

SIN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 3338 of 1997****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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VV SHAH - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR PARESH UPADHYAY for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1, 3,
Ms. Kiran Pande, AGP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 29/11/2006****ORAL JUDGMENT**

By way of this petition under Article 226 of the Constitution of India, the petitioner who has retired on attaining age of superannuation with effect from 31.10.1994, has prayed for

appropriate writ, direction or order directing the respondents to finalise and make payment of pension, gratuity and commutation of pension which the petitioner was entitled to as on 31.10.1994, i.e., the date of retirement.

2. It is the contention on behalf of the petitioner that few days of retirement departmental enquiry was initiated against the petitioner and defence statements were given by the petitioner on 14.11.1994 and 12.12.1994, however nothing further was shown and thereafter the enquiry was dropped against the petitioner by order dated 25.4.1996; inspite of that the amount of gratuity, commuted pension etc., were not paid. It is submitted that by order dated 21.2.1997 relying upon Government resolution dated 10.12.1987 an amount of Rs. 5000 was withheld from balance gratuity amount of Rs. 76,180 directed to be paid, and thereafter commuted pension and the balance amount of

gratuity came to be paid on 7.7.1997. It is therefore requested to award interest on the delayed payment of commuted pension and the amount of gratuity. It is submitted that at the relevant time the rate of interest was 12% and therefore interest be awarded at the rate of 12% p.a.

3. An affidavit-in-reply is filed on behalf of the respondents wherein it is submitted that it is true that departmental enquiry was dropped by order dated 25.4.1996 however subsequently for certain "other allegations" a proposed enquiry was under process in the Government in G.A.D., and therefore the amount of gratuity was not paid and it was paid excluding Rs. 5,000/- by order dated 21.2.1997. It is further submitted that 100 per cent provisional pension was paid to the petitioner. So far as the interest on commuted value of pension is concerned, Ms. Kiran Pande, learned AGP has relied upon decision of the

learned Single Judge of this Court dated 9.3.2006 rendered in Special Civil Application No. 5082 of 2004 whereby the learned Single Judge has refused to grant interest on the commuted value of pension by observing that the delayed payment of arrears of pension paid to the petitioner would carry appropriate interest and grant of additional interest on the commuted value of pension would amount to granting interest twice on the same amount. It is, therefore, requested to dismiss the present Special Civil Application.

3. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the petitioner retired on 31.10.1994 and even the departmental enquiry was dropped on 25.4.1996, and inspite of that under the guise of some proposed enquiry which had never taken place the amount of gratuity was withheld till 21.2.1997, and by order dated 21.2.1997 after withholding the amount of Rs. 5,000/- the balance amount of

gratuity was directed to be paid and the withheld amount of Rs. 5000/- was paid on 7.7.1997. Thus, there is no justification in withholding the amount of gratuity at least after 25.4.1996 on the ground of proposed enquiry as alleged which had never taken place. Under the circumstances, the petitioner is entitled to reasonable rate of interest on the delayed payment of gratuity amount at least from 25.4.1996. So far as interest on commuted value of pension is concerned, as held by the learned Single Judge of this Court in Special Civil Application No. 5082 of 2004 while making payment of commuted value of pension and interest on delayed payment of arrears of pension, interest is always added and therefore the same would amount to granting interest twice on the same amount. Under the circumstances, considering the aforesaid judgment of the learned Single Judge of this Court dated 9.3.2006 the petitioner would not be entitled to interest on commuted value of pension, however

the petitioner would be entitled to interest on delayed payment of gratuity for the period from 25.4.1996 till actual payment.

4. For the reasons stated above, the petition succeeds in part. The respondents are directed to pay interest at the rate of 10% on Rs. 47,468 for the period from 25.4.1996 to 21.2.1997, and at the rate of 10% p.a., on the amount of Rs. 5,000 for the period from 25.4.1996 to 7.7.1997. The respondents are required to pay interest for the period from 25.4.1996 to 21.2.1997 on the amount of Rs. 47,468, as though by order dated 25.2.1997 it was ordered to pay gratuity of Rs. 76,180 on ad-hoc basis, there was some recovery of Rs. 28,712/- which was adjusted and actual payment of Rs. 47,468 was directed to be paid. The aforesaid exercise including payment of interest as stated be done within the period of 3 months from the date of receipt of this order, failing which further interest will

carry at the rate of 10% till actual payment.
Rule is made absolute to the aforesaid extent.
No costs. Direct service is permitted.

[M.R. Shah, J.]

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